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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,552	08/01/2006	Kakuhei Isawa	Q90515	1938
65565	7590	07/29/2011		
SUGHRUE-265550				
2100 PENNSYLVANIA AVE. NW				
WASHINGTON, DC 20037-3213				
EXAMINER				
WILLIAMS, LEZA				
ART UNIT		PAPER NUMBER		
1789				
NOTIFICATION DATE		DELIVERY MODE		
07/20/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/550,552

Applicant(s)

ISAWA ET AL.

Examiner

LELA S. WILLIAMS

Art Unit

1789

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12, 13, 16-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12, 13, 16-19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 26, 2011 has been entered.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. **Claims 12, 13, 16-19, 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 59-163128 in view of Sato et al. WO 03/016544 (US 7,374,915 is relied upon for translation).**

Regarding claims 12, 13, 16, 17, 18, 19, 21, 22; JP 59-163128 discloses a method wherein an inert gas is bubbled through a liquid food product such as milk to prevent oxidation. The inert gas reduces the amount of dissolved oxygen in the product and the product is subjected to high temperature sterilization and packed and sealed in a bacteria free atmosphere which keeps the oxygen dissolved in the beverage reduced. The reference teaches that it is generally preferred to have less than 1 ppm of dissolved oxygen in a liquid food product and also shows and embodiment wherein the level of dissolved oxygen is 0.7ppm (pages 5 & 7 of translation).

The reference does not disclose the use of DHNA.

Sato discloses a process for producing a milk beverage wherein DHNA is added to the beverage. Sato teaches that DHNA "exhibits the effects of alleviating abdominal ailments which occur upon ingestion of milk" (col. 5, line 24). Given that 1, 4-dihydroxy-2-naphthoic acid is known to alleviate abdominal ailments associated with milk, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the milk beverage of JP 59-163128. Given that the process of JP 59-163128 dissolves an inert gas in the beverage product, the DHNA would have naturally been stabilized.

Response to Arguments

4. Applicant's arguments filed May 26, 2011 have been fully considered but they are not persuasive.
5. Applicants argue that JP 59-163128 fails to teach or suggest dissolved oxygen in an amount of 5ppm or less; however, the reference teaches that it is generally preferred to have less than 1 ppm of dissolved oxygen in a liquid food product and also shows an embodiment wherein the level of dissolved oxygen is 0.7ppm (pages 5 & 7 of translation).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Humera Sheikh can be reached on 571-272-0604. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Humera N. Sheikh/
Supervisory Patent Examiner, Art Unit 1789

/LELA S WILLIAMS/
Examiner, Art Unit 1789